

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ROBERT W. JACKSON, III,

Plaintiff,

-against-

STANLEY W. TAYLOR, JR., Commissioner, Delaware Department of Correction; THOMAS L. CARROLL, Warden, Delaware Correctional Center; PAUL HOWARD, Bureau Chief, Delaware Bureau of Prisons; and OTHER UNKNOWN STATE ACTORS RESPONSIBLE FOR AND PARTICIPATING IN THE CARRYING OUT OF PLAINTIFF'S EXECUTION, All in their Individual and Official Capacities,

Defendants.

Civil Action No.
06-CV-300

Chief Judge Sue L. Robinson

Electronically Filed

CLASS ACTION

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Plaintiff, through undersigned counsel, hereby moves pursuant to Rule 23 of the Federal Rules of Civil Procedure and Local Rule 23.1 for certification of this action as a class action. In support of this motion, plaintiff states the following:

1. This action is brought by Plaintiff, Robert Jackson, pursuant to 42 U.S.C. § 1983 seeking a permanent injunction against defendants with respect to a number of aspects of Delaware’s method for carrying out executions by lethal injections.

2. As alleged in the *Complaint*, Defendants maintain a system or protocol for carrying out executions of state prisoners, including Plaintiff, that will result in the deprivation of Plaintiff's

right to be free from cruel and unusual punishment in violation of the Eighth Amendment.

3. Since resolution of these important issues will turn on questions of law and fact common to all death-sentenced prisoners, this case is the paradigmatic model for a class action. Accordingly, Plaintiff moves for an order certifying a state-wide class pursuant to Fed.R.Civ.P. 23(a), (b)(1) &(2), consisting of all current and future prisoners in the custody of the Delaware Department of Correction, who are, or will be, sentenced to death.

4. As set forth in the accompanying memorandum in support of this motion, the putative class meets the requirements for such certification. The putative class is too numerous and fluid to make joinder practicable. The class shares common questions of law and fact. The claims of the class representative are typical of the putative class. The class representative will fairly and adequately represent the interest of the absent class members. Additionally, if this class is not certified, there is a risk that there could be inconsistent adjudications of the class' claims or that individual adjudications could be dispositive of the rights of the class. Finally, class certification is appropriate because the defendants have acted or refuse to act on grounds generally applicable to the class, thereby making injunctive or declaratory relief appropriate.

5. For all of these reasons and for the reasons set forth in the Complaint and in the accompanying Memorandum of Law, Plaintiff seeks the following relief:

A) That this Court certify this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B) That the class be certified under subsections b (1) & (2) and that it be deemed to consist of all present and future prisoners incarcerated in Delaware, who are under sentence of death imposed by a Delaware Court; and

C) That undersigned counsel be appointed as class counsel (counsel will not seek fees or costs in relationship to the litigation);

D) That the Court order the attached *Notice to the Class* be distributed individually to current class members and that it be posted prominently in the facility in which the putative class is incarcerated.

Respectfully Submitted,

/s/ Michael Wiseman

Maureen Kearney Rowley
Chief Federal Defender
By: Michael Wiseman
Helen Marino
Megan McCracken
Assistant Federal Defenders
Federal Community Defender
for the Eastern District of Pennsylvania
Capital Habeas Corpus Unit
Suite 545 West – The Curtis Center
Philadelphia, PA 19106
215-928-0520

Counsel for Plaintiff
Robert W. Jackson, III

Dated: Wilmington, Delaware
December 1, 2006

Certificate of Service

I, Michael Wiseman, hereby certify that on this 1st day of December, 2006 I served the foregoing upon the following persons by United States Mail, First Class, postage prepaid:

Loren Myers, Esq.
Gregory E. Smith, ID No. 3869
Deputy Attorney General
820 North French Street, 6th Floor
Carvel State Building
Wilmington, Delaware 19801

/s/ Michael Wiseman

Michael Wiseman

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NOTICE OF CLASS ACTION

PLEASE TAKE NOTICE that the above-captioned case has been certified as a class action pursuant to Federal Rule of Civil Procedure 23 (b)(1) & (2). The Court has directed that this Notice be provided to each current class member and that it be posted prominently.

The class certified by the Court includes all current and future prisoners sentenced to death by a state court in the State of Delaware.

This action was commenced by the filing of a Complaint on May 8, 2006. The Complaint alleges that the methods utilized by the Defendants to carry out executions in the State of Delaware violate the Eighth Amendment to the United States Constitution.

The Court granted a preliminary injunction prohibiting the Defendants from executing Mr. Jackson until further order of the Court. However, the allegations contained in the Complaint have not yet been proven or accepted as true by the Court. That will not happen, if at all, until the completion of the case. Pursuant to the law, you do not need to take any action to remain as part of the class. Your inclusion as a member of the class will not have any impact on the merits of the litigation of either your conviction(s) or sentence(s).

The lawyers for the class and their contact information are:

Michael Wiseman, Helen Marino, Megan McCracken
Capital Habeas Corpus Unit
Federal Community Defender Office for the Eastern District of Pennsylvania
Suite 545 West-The Curtis Center
Philadelphia, PA 19106
215-928-0520

Class counsel take collect phone calls.

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ORDER

And now, this ____ day of _____, 200_, upon consideration of *Plaintiff's Motion for Class Certification* and *Plaintiff's Memorandum in Support*, and Defendants' submissions in opposition, it his hereby ORDERED:

1. Plaintiff's Motion is granted;
2. This case is certified as a class action pursuant to Fed.R.Civ.P. 23(b)(1) & (2);
3. The following are appointed as class counsel with the understanding and agreement that counsel will not petition for fees or costs:

Michael Wiseman, Helen Marino, Megan McCracken
Capital Habeas Corpus Unit
Federal Community Defender Office for the Eastern District of Pennsylvania
Suite 545 West – The Curtis Center
Philadelphia, PA 19106
215-928-0520

4. The proposed Notice to the Class attached to Petitioner's Motion is approved. One copy will be provided to each member of the class, and a copy or copies will be posted prominently in the area(s) in which the class is incarcerated.

SUE L. ROBINSON, Chief USDJ

Dated: _____, 200__
Wilmington, Delaware